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Decision

Matter of: International Medical Corps

File: B-403688

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GAO, participated in the preparation of the decision.

DIGEST

Protest that an agency unreasonably evaluated protester's technical proposal and excluded it from the competitive range is denied where the agency reasonably determined that the protester's proposal contained numerous weaknesses and deficiencies and was not among the most highly rated offers.

DECISION

International Medical Corps (IMC) of Washington, D.C., protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 267-10-009, issued by the Agency for International Development (AID) for healthcare support services for the Iraqi Ministry of Health (MOH). The protester challenges the agency's evaluation of its proposal and complains that the agency did not clarify its proposal before excluding it from the competitive range.

We deny the protest.

BACKGROUND

The RFP, issued under Federal Acquisition Regulation (FAR) part 15, provided for the award of a 4-year, cost-plus-fixed-fee contract for services supporting AID's primary healthcare project in Iraq. This project is intended to assist the Iraqi MOH in achieving better quality primary healthcare services. See RFP at 1.

The RFP included a detailed statement of work (SOW). The SOW provided an overview of the current Iraqi healthcare system and identified a number of deliverables corresponding to project components and key principles. These principles included rapid, measurable improvements in the quality of healthcare

services delivered to the Iraqi people; improving professional training and expanding job duties for healthcare providers, especially nurses; and realistic, practical technical assistance procedures which can be effectively applied in all primary healthcare clinics, not only in “model” sites. See SOW at 12-16. In this regard, the deliverables include, among other things, developing standards, materials, and training programs for clinical operations, patient records and rights, and quality improvement. See id. at 16-29. The SOW also identified three required key personnel (a chief of party, a director of health systems, and a director of quality clinical care) and their qualifications.¹ The contractor was also required to incorporate gender issues, geographic coverage, clinic selection, and other considerations. For example, all guidelines with regard to medical waste management and/or clinical sanitary practices must meet certain specified environmental conditions. See id. at 30.

Offerors were informed that award would be made on a best value basis, considering cost and the following four technical evaluation factors (in descending order of importance): technical approach; key personnel and staffing plan; management plan; and organizational capacity and past performance. RFP at 108. The technical evaluation factors were significantly more important than cost. Id. at 107. The RFP stated that the agency intended to make award without conducting discussions and, in this respect, advised offerors that they should propose their best cost and technical terms. Id. at 90.

With regard to the technical approach factor, offerors were informed that proposals would be evaluated on the extent to which the offeror provides a clear, proven, and feasible approach to improving healthcare in Iraq. See id. at 108. With regard to the key personnel/staffing plan factor, proposals would be evaluated on the extent to which key personnel satisfied the SOW criteria, and the staffing plan demonstrated the offeror’s ability to effectively implement their proposed technical approach.² With regard to the management plan factor, proposals would be evaluated on the extent to which the offeror’s institutional experience and management capability demonstrated the ability to successfully implement the program and achieve rapid, realistic “quick wins” within the first year. Id. at 109.

¹ For example, the project’s chief of party was required to have, among other things, at least 7 years of relevant healthcare experience and a masters degree in a relevant field. SOW at 31-32. The SOW stated for each of the three identified key personnel knowledge of Arabic and experience in the Arab world was desirable, but not required.

² The key personnel factor includes 2 subfactors: (1) key personnel (chief of party, director of health systems, and director of quality clinical care) and (2) other additional key personnel and overall staffing plan. RFP at 108-09.

Detailed instructions were provided for the preparation of proposals under each evaluation factor. Offerors were also advised to be sensitive to the situation in Iraq and balance international best practices with a unique, country-specific approach. RFP at 94.

Under the technical approach factor, proposals were required to succinctly describe the offeror's proposed approach for carrying out the SOW requirements, and explain how the approach will be adapted to the Iraqi context. See id. at 92-95. That is, offerors were required to provide a rationale for how their proposed approach would contribute to the goals of strengthening the primary healthcare system and improving healthcare delivery.³ In this respect, offerors were required to provide an illustrative performance monitoring plan with basic and higher-level indicators to measure results, such as the number of people trained and standards developed. Under the key personnel/staffing plan factor, offerors were instructed to submit staffing and organization plans. Offerors were also required to provide resumes that highlighted key personnel's education, work experience, and professional accomplishments that were directly relevant to the project. Id. at 96. Under the management plan factor, offerors were required to include operations plans and 1-year illustrative work plans. Offerors were also required to demonstrate experience in managing similarly complex quality improvement/primary healthcare programs in challenging development contexts like Iraq. Id. at 97.

The agency received eight proposals, including IMC's. Contracting Officer's (CO) Statement at 1. Four proposals were rejected as being noncompliant to the RFP requirements, and the remaining proposals, including IMC's, were evaluated by the agency's technical evaluation committee (TEC). CO's Statement at 2; Agency Report (AR), Tab 10, Technical Evaluation Memorandum, at 1.

IMC proposed a [DELETED] model. IMC's Technical Proposal at 1. IMC's model would [DELETED]. The proposal describes this model as a [DELETED]. See id. at 6-7. The proposal also states that the [DELETED]. According to IMC, the strategy

³ Offerors were also required to describe their experience in successfully implementing their proposed approach and achieving quantified, documented improvement in healthcare.

is based on a business process model and was developed after analyzing many alternative approaches.⁴ Id. at 2.

The TEC assigned the following adjectival ratings:⁵

| | Offeror A | Offeror B | Offeror C | IMC |
|---|-------------------|-------------------|------------------|-----------------|
| Technical approach | Acceptable | Marginal | Better | Marginal |
| Key personnel/ staffing plan | Better | Acceptable | Acceptable | Marginal |
| Management Plan | Acceptable | Acceptable | Acceptable | Marginal |
| Past performance | Acceptable | Acceptable | Better | Acceptable |
| OVERALL | Acceptable | Acceptable | Better | Marginal |

AR, Tab 10, Technical Evaluation Memorandum, Table 1, Consensus Score Sheet. IMC's overall marginal rating reflected the evaluators' judgment that, although IMC's proposal presented some strengths, it contained a number of weaknesses, significant weaknesses, and deficiencies.

With respect to IMC's marginal rating under the technical approach factor, the TEC found that IMC's approach "relied heavily" on [DELETED] within a very short time period and that the amount of resources and efforts required [DELETED] was not consonant with the project's intent to support "realistic, practical systems, procedures, and tools which can be effectively applied in all primary healthcare

⁴ IMC's technical proposal included approximately four dozen diagrams, figures, tables, charts, and graphs, a number of which are illegible and repeated throughout the proposal. The diagrams, figures, tables, charts, and graphs include IMC's proposed network model; system approach; implementation framework; operational model; cascade development plan; product development model; training, mentoring, and capabilities development and continuous improvement model; illustrative strengthening methodologies; fully functional service delivery point; pathways conceptual framework; illustrative activities, methodologies, and deliverables; healthcare intervention planning and tracking tool; performance monitoring framework; overall plan for performance management; design for establishing and incorporating baseline and target measures into IMC's overall performance monitoring plan; staffing considerations; process-based project planning; process for project reporting; lines of authority; and illustrative first year work plan.

⁵ Proposals were rated as either outstanding, better, acceptable, marginal, or unacceptable. A marginal rating reflected a proposal that was less than acceptable, having some deficiencies, but that had a reasonable chance of becoming acceptable if discussions were conducted. See AR, Tab 10, Technical Evaluation Memorandum, attach., Evaluation Method: Adjectival Scale, at 1.

clinics, not only in higher functional ‘model’ sites.” Id. at 2. The TEC doubted that IMC’s proposed model could be successfully implemented in Iraq given IMC’s proposed timeframe, the relatively poor quality of clinical care, shortage of qualified health professionals, frequent turnover of clinical staff, and heavy patient workload at many primary care centers. In this regard, the TEC noted that IMC provided no evidence to demonstrate that its approach has been successfully pilot tested or implemented in Iraq or elsewhere.⁶ The TEC also found IMC’s illustrative performance monitoring plan to be unacceptable, stating that the plan was poorly organized, provided no explanation of what indicators will be measured to assess compliance with the quality standards, and did not reflect higher level impact or outcome indicators for the project. See id. at 31-32. In addition, the TEC found that IMC’s proposal did not address environmental compliance, as required by the RFP.

Under the key personnel/staffing plan factor, the TEC noted as a deficiency in IMC’s proposal that no overall rationale or narrative was provided to explain IMC’s “complicated” staffing plan and that the proposal’s organizational chart did not include all the positions shown in its staffing plan. Id. at 34. The TEC also noted a number of weaknesses with respect to IMC’s proposed key personnel (chief of party, director of health systems, and director of quality clinical care), although the TEC found these personnel to be acceptable. For example, with respect to its proposed chief of party, the TEC noted that this individual had advanced degrees but not in areas directly relevant to the scope of the project and his specific area of expertise was unclear. In this regard, the TEC noted that it found it difficult to assess IMC’s proposed key personnel because resumes for these individuals were formatted in such a way that the TEC could not ascertain which work experience/job duties went with which position (and timeframe).⁷ See id. at 33. In addition, although the TEC found proposed key personnel to be acceptable, it noted that IMC had not indicated any Arabic language skills for these individuals. Id. at 33-34.

With respect to IMC’s marginal rating under the management plan factor, the TEC noted a number of significant weaknesses and deficiencies in the protester’s proposal, including that the firm’s proposed [DELETED] timeline [DELETED] was

⁶ The TEC also noted that the proposal failed to clearly present IMC’s proposed approach and that, in this regard, the proposal’s numerous diagrams, figures, charts, and tables were repetitive, unhelpful, and created “a sense of complexity rather than clarity.” See AR, Tab 10, Technical Evaluation Memorandum, at 30, 32.

⁷ The TEC had similar concerns for IMC’s other two proposed key personnel, for which the evaluators stated that they could not determine how much of their prior experience was relevant to primary healthcare. AR, Tab 10, Technical Evaluation Memorandum, at 33-34.

unrealistic.⁸ The TEC also noted as a deficiency that IMC's proposed illustrative work plan did not clearly address two required SOW deliverables (primary healthcare improvement program and research agenda and studies for strengthening primary healthcare in Iraq). Id. at 35-36.

Considering the four offerors' probable costs and technical ratings, the CO determined that only the proposals of Offerors A, B, and C should be included in the competitive range as the mostly highly rated offerors.⁹ CO's Statement at 2; AR, Tab 11, Competitive Range Determination, at 43-44. In this regard, the CO determined that IMC's proposal was technically inferior and would require major revisions to become competitive. Id. at 44.

DISCUSSION

The protester complains that the agency improperly evaluated its technical proposal. The protester contends that its [DELETED] approach adequately responds to the RFP's various training requirements. See Protest at 4. In this regard, the protester objects to the agency's assertion that IMC had not demonstrated the success of its approach, pointing out that its proposed model is widely accepted and used worldwide, including by AID in the Ukraine, Tajikistan, Palestine, and the Dominican Republic. The protester also disputes the TEC's finding that its illustrative performance monitoring plan did not reflect higher level impact or outcome indicators. The protester also complains that the agency applied an undisclosed evaluation factor where the agency assessed a weakness for IMC's key personnel lack of Arabic, because knowledge of Arabic was not required by the RFP. Comments at 5-6. Finally, IMC complains that its proposal should have been included in the competitive range, because IMC proposed the lowest overall cost and its proposal had a reasonable chance of being made acceptable through discussions.

The agency responds that it did not fault or question the relative merits of the protester's proposed [DELETED] model, but questioned the feasibility of IMC's approach within the Iraqi public healthcare system. See AR at 13. According to the agency, IMC did not provide sufficient information for the agency to conclude that

⁸ The TEC also noted a number of strengths, including that IMC has worked in Iraq for 8 years, has experience implementing health-related projects in Iraq, proposed staff and consultants with significant international health expertise and relevant experience, and its approach includes positive aspects and a good integration of gender issues.

⁹ Although IMC proposed the lowest overall cost, it had the highest overall probable costs of the four offerors. IMC's proposed costs were found to be unrealistic, unbalanced and inconsistent with the firm's technical approach and/or the program requirements. AR, Tab 11, Competitive Range Determination, at 44.

its proposed methodology was a feasible approach here. See CO's Statement at 3. In this regard, the agency states that the proposal's basic structure was not realistic given the current state of the Iraqi healthcare system and the time frames proposed by IMC, and was therefore incompatible with providing technical assistance which can be effectively applied in all primary healthcare clinics. See AR at 14, 16.

Our Office will review an agency's evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. Cylab Inc., B-402716, July 13, 2010, 2010 CPD ¶ 163 at 4. Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. FAR § 15.306(c)(1); General Atomics Aeronautical Sys., Inc., B-311004, B-311004.2, Mar. 28, 2008, 2008 CPD ¶ 105 at 5. In this regard, a protester's mere disagreement with an agency's evaluation and competitive range judgment does not establish that the agency acted unreasonably. CMC & Maint., Inc., B-290152, June 24, 2002, 2002 CPD ¶ 107 at 2.

Here, the RFP informed offerors that proposals would be evaluated on the extent to which offerors provided a feasible approach to improving the quality of primary healthcare delivery in Iraq and demonstrated the ability to implement the project rapidly and realistically and achieve "quick wins" within the first year. RFP at 16, 108. In this regard, the SOW provided an overview of the current Iraqi healthcare system and advised offerors to be sensitive to the country's situation and balance international best practices with a unique, country-specific approach. Offerors were also required to demonstrate institutional experience in successfully implementing their proposed approach. The SOW also states that the project requires practical technical assistance that could be effectively applied in all primary healthcare clinics, not simply model sites like the centers proposed by the protester.

Although the protester generally challenges the agency's evaluation of its proposed approach as marginal (and disputes the agency's evaluation of its proposed illustrative performance monitoring plan and key personnel), it does not dispute or address the agency's finding that IMC's proposed timeline and "quick wins" were unrealistic in the Iraqi context and that its proposal could not be rapidly applied in all primary healthcare clinics in Iraq. See Protest at 4; Comments at 6. To the extent that the protester contends that its proposed model is used worldwide, including by AID, that rationale is not discussed in the protester's proposal; moreover, this does not address the agency's concerns with the use of this model in Iraq. The protester's proposal merely states that it analyzed alternative models, but only provides generalized statements regarding best practices in Iraq "and similar environments," "tools proven in challenging field environments like Iraq," and frameworks employed in Iraq and Afghanistan. See, e.g., IMC's Technical Proposal at 2, 8-10. In fact, there are a number of significant weaknesses and deficiencies assessed in its proposal that the protester does not contest, including for example, the agency's finding that its

proposal did not address environmental considerations and that its staffing plan provides no overall rationale or narrative.

Moreover, we agree with the agency that the protester's proposal did not clearly explain IMC's proposed technical approach and that the protester's staffing and illustrative performance monitoring plans are not clearly presented. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. Here, we find from our review of IMC's proposal that IMC appeared to rely more upon a dizzying array of complex diagrams, figures, tables, charts, and graphs, than a well-written explanation of its proposed technical approach. Indeed, several diagrams and figures are completely illegible. The resumes submitted for IMC's key personnel are also disorganized and difficult to follow. See, e.g., Mike Kesler Enter., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 3-4 (agency reasonably determined that protester's proposal did not provide sufficient detail and was technically unacceptable where proposal lacked clear and consistent language and information necessary to determine if the proposal would function as proposed).

The protester also challenges the agency's assessment that IMC's proposed illustrative performance monitoring plan failed to provide higher level impact or outcome indicators. We find no reason to disagree with the agency's finding in this regard. IMC's plan listed 39 so-called "indicators" and "measurements," which simply parrot the list of deliverables in the RFP. See IMC's Technical Proposal at 25-28, annex A, at 1-7. For example, the plan restates the deliverables for the establishment of a national technical advisory group and the development of a handbook of quality standards for clinic management, describes these deliverables as "indicators," and states that the targets for those so-called indicators are "designated rating," but does not define or explain the term "designated rating." See id., annex A, at 1. Also, the plan purports to identify "intermediate" indicators and outcomes, but does not in fact identify any "higher-level" indicators as required by the SOW. See, e.g., id.

With respect to the protester's complaint that the agency assessed a weakness in its proposal for its key personnel's lack of Arabic language skills, we find no reasonable possibility that the protester was competitively prejudiced in this regard. As noted above, the TEC found that IMC's proposed key personnel were acceptable, despite the evaluators' concern that these individuals lacked Arabic language skills.¹⁰ The record shows that the marginal rating that IMC received under the key

¹⁰ In its comments, the protester states that its key personnel are indeed fluent or have a working knowledge of Arabic. This was not provided in IMC's personnel resumes or proposal. See Comments at 6.

personnel/staffing plan factor and overall was not due to the assessment of this one weakness.

Finally, we find no merit to IMC's argument that its proposal should have been included in the competitive range, because IMC proposed the lowest overall cost and its proposal was susceptible of being made acceptable through discussions. Although it is true that IMC proposed the lowest overall costs, where, as here, an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not controlling because, regardless of the costs proposed by an offeror, the government is bound to pay the contractor its actual and allowable costs. The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 63. Here, the agency found IMC's proposed costs to be unrealistic, unbalanced and inconsistent with the firm's technical approach and/or the program requirements.¹¹ AR, Tab 11, Competitive Range Determination, at 44. IMC's evaluated probable costs of performance were significantly higher than the three offerors' whose proposals were included in the competitive range. Given IMC's much higher probable costs and the evaluated weaknesses and deficiencies in its proposal, we find that the agency reasonably concluded that IMC's proposal was not among the most highly rated offers for inclusion in the competitive range.

The protester also contends that, prior to excluding its proposal from the competitive range, the agency should have sought clarifications from IMC. The agency responds that the significant weaknesses and deficiencies in IMC's proposal could not be resolved by clarifications. See AR at 16-20. Moreover, the agency contends that it was under no obligation to seek clarifications, in any event.

FAR § 15.306 describes a spectrum of exchanges that may take place between a contracting agency and an offeror during negotiated procurements. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR § 15.306(a); Satellite Servs., Inc., B-295866; B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n. 2. By contrast, discussions—which are to occur after establishment of the competitive range—involve the agency indicating to each offeror the significant weaknesses, deficiencies, and other aspects of its proposal that could be altered or explained to materially enhance the proposal's potential for award. FAR § 15.306(d)(3).

Where, as here, the agency establishes a competitive range to conduct discussions, the agency may conduct communications with an offeror to facilitate the agency's understanding and evaluation of the offeror's proposal or for the purpose of exploring whether a proposal should be included in the competitive range. See FAR

¹¹ IMC does not protest the agency's cost realism evaluation of its proposal.

§ 15.306(b)(2). Such communications, however, cannot “be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal.” Id.; Battelle Mem’l Inst., B-299533, May 14, 2007, 2007 CPD ¶ 94 at 4.

We agree with AID that the agency was not required to seek clarifications from, or otherwise have communications with IMC, prior to the establishment of the competitive range. See JBlanco Enter., Inc., B-402905, Aug. 05, 2010, 2010 CPD ¶ 186 at 4, n.4. Moreover, the significant weaknesses and deficiencies in IMC’s proposal could not properly be the subject of either clarifications or communications before the establishment of the competitive range, as this would require material revisions to IMC’s proposal.

The protest is denied.

Lynn H. Gibson
Acting General Counsel